



# STATE RESIDENCY AND TAX RIGHTS UNDER THE SCRA AND MSRRA

Last Reviewed: 16 March 2012

**DISCLAIMER:** This handout has been produced by the office of the Staff Judge Advocate, 66 ABG/JA, Hanscom AFB, MA 01731. This handout is for general guidance only. It is not meant to be a substitute for legal advice and it cannot be cited as legal authority. Before taking any action, you should consult an attorney for guidance.

## THE LAW UNDER THE SCRA

Relocating on orders has residency and tax implications both for servicemembers and spouses. In the past, under the Servicemembers Civil Relief Act (SCRA), servicemembers moving on orders could retain prior legal residency and could pay to the “previous state” (state of legal residence prior to a PCS move) income taxes on qualifying income earned in the “new state” (PCS state), but spouses could not; instead, moving spouses had to change residency to the “new state” and were required to pay income tax in the “new state” on all income earned there.

## MSRRA CHANGES IN THE LAW

Beginning in fiscal year 2010, under the Military Spouses Residency Relief Act (MSRRA), a military spouse is no longer required to change state residency, or pay to the “new state” income taxes on qualifying income earned in the “new state” if the following three conditions are met:

- (1) the spouse is relocating solely because of a servicemember’s orders;
- (2) the servicemember and spouse qualify for legal residency in a “previous state”;
- (3) the servicemember and spouse currently claim residency in the same state.

If these conditions are met, the spouse may pay to the “previous state” income taxes on qualifying income earned in the “new state.”

For example, Brenda is PCSing from Charleston AFB in South Carolina to Hanscom AFB in Massachusetts. Brenda’s husband Jim is a civilian who will be moving with Brenda solely because of Brenda’s orders, and Jim will be finding work in the Boston area. South Carolina is Brenda and Jim’s current state of legal residence before the move. Neither Brenda nor Jim have to change their state of residency to Massachusetts or pay income taxes to Massachusetts for qualifying income earned in Massachusetts. State income taxes on qualifying income earned in Massachusetts will be paid to South Carolina. This is because Jim is moving to Massachusetts solely because of Brenda’s orders and South Carolina is still the legal residence of both Brenda and Jim.

## IMPORTANT QUESTIONS

- (1) What is qualifying income earned in the “new state?”
- (2) How do states determine residency?
- (3) Do the servicemember and spouse have to remain residents of their “previous state?”
- (4) What if the servicemember and spouse have legal residences in different states?
- (5) When does an MSRRA qualifying spouse have to file a tax return in Massachusetts?

**DISCLAIMER:** This handout has been produced by the office of the Staff Judge Advocate, 66 ABG/JA, Hanscom AFB, MA 01731. This handout is for general guidance only. It is not meant to be a substitute for legal advice and it cannot be cited as legal authority. Before taking any action, you should consult an attorney for guidance.

- (6) If I qualify for taxation in my “previous state” under the MSRRA, how can I avoid a Massachusetts W2-withholding?

### **WHAT IS QUALIFYING INCOME EARNED IN THE “NEW STATE?”**

Qualifying income earned in the “new state” is income earned from “**SERVICES PERFORMED** by the spouse or servicemember.” Services performed commonly refers to work performed for an employer. Lottery and other gambling earnings, and earnings from real property (houses, apartments, etc.) are not considered services performed and are thus subject to taxation in the “new state.” Self-employment may or may not qualify as a “service performed” based on the type of business, the number of employees, and sources of capital. If you, as the spouse or servicemember, have income from sources other than an employer, contact your legal-aid office for more information concerning your tax requirements under the MSRRA, SCRA, and state law.

### **HOW DO STATES DETERMINE LEGAL RESIDENCY?**

Residency is a technical legal term. It is not a common term meaning the location of the house, apartment, or condominium where you currently reside. The requirements for legal residency differ from state to state, but most states, including Massachusetts consider where a person actually lives, registers a car, holds a driver’s license, and registers to vote. This is not a complete list of factors that could determine legal residency, but these factors are the most common. Remember, although you may have residences in several states, there is only one state of **LEGAL** residency for the purposes of taxation. Considering the example above, if Brenda or Jim (or both) want to change their state of legal residence from South Carolina to Massachusetts, they should, at a minimum, live off base and change their car registration, driver’s licenses, and voter registrations to Massachusetts. They also may consider establishing bank accounts in Massachusetts. For a more thorough discussion about determining legal residence, see the “State Residency Requirements” handout found in the legal-aid office.

### **DO THE SERVICEMEMBER AND SPOUSE HAVE TO REMAIN LEGAL RESIDENTS OF THEIR “PREVIOUS STATE?”**

Maybe: If the servicemember or spouse legally qualify under state law for residency in the “new state,” either or both may establish residency in the “new state.” A servicemember or spouse who does not qualify under state law for residency in the “new state” may not establish residency there. Taking our example above, Brenda or Jim (or both) desire to change their state of legal residence to Massachusetts and pay state income taxes to Massachusetts. Assume that both are qualified to claim legal residence in Massachusetts under Massachusetts law. Either Jim or Brenda, or both Jim and Brenda, may change residency and pay income taxes to Massachusetts instead of South Carolina.

### **WHAT IF THE SERVICEMEMBER AND SPOUSE HAVE LEGAL RESIDENCES IN DIFFERENT STATES?**

If the servicemember and spouse have legal residences in different states, the “new state” may require the spouse to change legal residence to the “new state” and pay income taxes on all income earned in the “new state.” If eligible however, the servicemember will still be able to claim legal residence in a “previous state” and will avoid paying income taxes on qualifying income in the “new state.”

### **WHEN DOES A MSRRA QUALIFYING SPOUSE HAVE TO FILE A TAX RETURN IN MASSACHUSETTS?**

**DISCLAIMER:** This handout has been produced by the office of the Staff Judge Advocate, 66 ABG/JA, Hanscom AFB, MA 01731. This handout is for general guidance only. It is not meant to be a substitute for legal advice and it cannot be cited as legal authority. Before taking any action, you should consult an attorney for guidance.

A MSRRA qualifying spouse must file a tax return in Massachusetts if (1) income derived from sources other than services performed exceeds the Massachusetts filing threshold, or (2) to get a refund of qualifying Massachusetts tax dollars withheld from the spouse's paycheck. To reiterate, if you have had Massachusetts state tax withheld for income exempt from Massachusetts state tax under the MSRRA, you **MUST** file a Massachusetts income tax return in order to get a tax refund. For example, Jim qualifies under the MSRRA, but his employer has withheld qualified income from his paycheck. In order to get this money refunded, Jim must file a Massachusetts tax return.

#### **MAY A MSRRA QUALIFYING SPOUSE AVOID MASSACHUSETTS W2-WITHHOLDING?**

Yes, but you must complete Form M-4-MS, Annual Withholding Tax Exemption Certificate for Military Spouse, and provide required documentation. **The Form M-4-MS must be validated on an annual basis.** The military spouse must show continued eligibility for the exemption.

If you have any questions concerning your residence and tax rights under the SCRA or MSRRA, you should consult an attorney or your legal-aid office for advice.